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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

ADG CONCERNS, INC. d/b/a HEALTH  
CONCERNS, a Washington corporation,  
and GOODE, INC., a Nevada corporation,

Plaintiffs,

v.

TSALEVICH LLC,

Defendant.

Case 5:18-cv-00818-NC

**DECLARATION OF JASON WELLS IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR DEFAULT JUDGMENT AGAINST  
DEFENDANT TSALEVICH LLC**

**Hearing Date: August 1, 2018**

**Time: 1:00 p.m.**

**Judge: Nathaniel Cousins**

**Courtroom: 5**

I, Jason Wells, make the following declaration in support of ADG Concerns, Inc. d/b/a Health Concerns and Goode, Inc.'s ("Plaintiffs") Motion for Default Judgment Against Defendant Tsalevich LLC in the above-captioned matter.

1           1.       I am the Chief Technology Officer at iServe Products, Inc. (“iServe”), a Utah  
2 corporation. I have personal knowledge of the facts in this Declaration and, if called as a  
3 witness, could and would testify to such facts under oath.

4           2.       As part of my duties, I am responsible for operating a monitoring service called  
5 TriGuardian.

6           3.       TriGuardian is a monitoring service that helps companies monitor listings and  
7 sales of their products on the online marketplace [www.amazon.com](http://www.amazon.com) (“Amazon”). iServe also  
8 sells products on Amazon and uses TriGuardian to monitor its product listings and sales on  
9 Amazon.

10          4.       Through TriGuardian, a company can set up monitoring for all of its products that  
11 are being offered for sale on Amazon, including monitoring of all storefronts that are offering the  
12 company’s products and the prices at which all storefronts are offering the company’s products  
13 for sale. Once the monitoring is in place, TriGuardian collects data regarding the company’s  
14 products that are listed for sale on Amazon.

15          5.       Among other things, TriGuardian monitors product listings throughout the day to  
16 learn which storefront has been selected by Amazon as the occupant of the “Buy Box” for  
17 specific products. When there are multiple storefronts offering the same product for sale,  
18 Amazon uses an algorithm that selects a single storefront as the occupant of the Buy Box. The  
19 Buy Box, which can be occupied by many different storefronts within a single day, is highly  
20 prized by sellers on Amazon because it is prominently placed on Amazon’s product listing  
21 pages. Consumers who click the “Add to Cart” button on Amazon product listing pages will  
22 begin the process of purchasing a product from the storefront in the Buy Box, whereas  
23 consumers are able to purchase products from storefronts that do not occupy the Buy Box only  
24 by clicking a small link that takes the consumer to a page that lists other storefronts that are  
25 selling the product. Because of how the Amazon interface favors the Buy Box, the vast majority  
26 of products that are purchased on Amazon are purchased from storefronts that are in the Buy  
27 Box.  
28

1           6. Through its monitoring, TriGuardian calculates the effective percentage of time  
2 that each storefront offering a product for sale “held” the Buy Box each day. In making this  
3 calculation, TriGuardian considers the amount of time that it observed a storefront in the Buy  
4 Box through its monitoring but also considers additional factors such as what time of day the  
5 storefront held the Buy Box. As an example, a storefront that occupied the Buy Box only from  
6 approximately midnight to 8:00 a.m. would generally be calculated as holding the Buy Box for  
7 less than 33% of a day, even though the storefront held the Buy Box for 8 hours of a 24-hour  
8 day, because data shows that consumers purchase fewer products during overnight hours than  
9 they purchase during daytime hours.

10           7. TriGuardian also calculates how many units of products are sold on Amazon  
11 during a day. On Amazon, products are identified by unique numbers called ASINs. Each  
12 discrete product is assigned a separate ASIN. When there are multiple storefronts selling the  
13 same ASIN, consumers may purchase the ASIN from more than one storefront within the same  
14 day. This is especially likely if multiple storefronts hold the Buy Box within the same day.

15           8. TriGuardian calculates how many total products of the same ASIN were sold in a  
16 day by compiling various data. First, when iServe is selling an ASIN, TriGuardian looks at how  
17 many units of the ASIN iServe sold in a given day and the effective percentage of time that  
18 iServe held the Buy Box that day to extrapolate how many total units were sold by all storefronts  
19 selling the ASIN. For example, if iServe sold 5 units during a day in which it effectively held  
20 the Buy Box for 50% of the time, using this data alone TriGuardian would generally calculate  
21 that approximately 10 units were collectively sold by all storefronts selling the ASIN. However,  
22 TriGuardian also considers other data in calculating total units sold such as product rankings that  
23 are publicly available through Amazon and various attributes of each storefront that is selling an  
24 ASIN.

25           9. Through these calculations, TriGuardian is able to estimate how many units of a  
26 specific ASIN were sold by a specific storefront on each day that TriGuardian’s monitoring has  
27 been in place. TriGuardian estimates this number by multiplying the total number of units of an  
28

1 ASIN that were sold in a day by the effective percentage of time the storefront held the Buy Box  
2 during that day, as well as applying additional adjustments through a proprietary formula. This  
3 produces an estimate of how many units of the ASIN were sold by a storefront on each day.

4 10. TriGuardian is also able to estimate the revenue earned by storefronts through  
5 sales of specific products. As part of its monitoring, TriGuardian records the prices at which a  
6 storefront is offering products for sale. To calculate revenue, TriGuardian multiplies a  
7 storefront's price for a given product by TriGuardian's estimate of how many units the storefront  
8 sold in a day. For example, if a product was offered by a storefront for \$25 per unit and  
9 TriGuardian estimated that the storefront sold 8 units on a specific day, the storefront's revenue  
10 from sales of the product on that day would be \$200.

11 11. TriGuardian's estimates of a storefront's sales volume and revenue have been  
12 tested by comparing its estimates for iServe against iServe's actual sales volume and revenue.  
13 This testing has determined that TriGuardian produces very accurate estimates of a storefront's  
14 sales volume and resulting revenue. The margin of error has been determined to be 10%.

15 12. One of the plaintiffs in this case, ADG Concerns, Inc. d/b/a Health Concerns  
16 ("Health Concerns"), hired iServe before November 2017 to use TriGuardian to monitor the  
17 listings of all Health Concerns products on Amazon.

18 13. In connection with this matter, I was directed by Health Concerns to pull data  
19 collected by TriGuardian from November 1, 2017 to May 31, 2018 related to the listings and  
20 sales of Health Concerns products through an Amazon storefront formerly named "Premium  
21 Health INC" and now named "Homeopathic USA" (the "Storefront").

22 14. The data I pulled includes data regarding the listings of all Health Concerns  
23 products that were offered for sale through the Storefront, including the products listed and the  
24 prices at which they were listed on each day from November 1, 2017 to May 31, 2018. I also  
25 pulled data regarding the effective percentage of time that the Storefront held the Buy Box for  
26 each Health Concerns product, and TriGuardian's resulting estimates of how many Health  
27  
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Concerns products were sold by the Storefront on each day from November 1, 2017 to May 31, 2018. A printout of a spreadsheet containing this data is attached hereto as **Exhibit A**.

15. The first two pages of Exhibit A contain a summary list of the total sales of each Health Concerns product from November 1, 2017 to May 31, 2018. The summary shows that the total sales of all Health Concerns products sold through the Storefront from November 1, 2017 to May 31, 2018 were \$177,534.56.

16. The data supporting the figures on the first two pages of Exhibit A is contained in the subsequent pages of Exhibit A. For example, pages 30 to 35 provide the supporting data for the product “Health Concerns – Quiet Digestion – Curing Herbal Supplement – 90 Tablets.” The first column identifies the date on which data was collected. The second column shows the ASIN that was assigned to the product by Amazon (B000S94CMK). The third column contains the name of the product. The fourth column shows the price at which the Storefront listed the product on each day. The fifth column shows TriGuardian’s calculation of the number of units of the product that were sold by the Storefront on each day. The sixth column shows TriGuardian’s calculation of the percentage of time the Storefront held the Buy Box for that product on each day. The seventh column shows TriGuardian’s calculation of the total revenue the Storefront earned from sales of the product on each day.

17. For the “Health Concerns – Quiet Digestion – Curing Herbal Supplement – 90 Tablets” product, TriGuardian calculates that the Storefront’s total sales from November 1, 2017 to May 31, 2018 were \$9,592.67. This total was calculated by adding together three separate subtotals because, for this particular product, the price the Storefront sold it at changed two times between November 1, 2017 and May 31, 2018. From November 1 to November 27 the price was \$27.99; from November 28 to December 3 the price was \$25.90, and from December 4 through May 31 the price was \$25.25.

18. The data for each of the other Health Concerns products that were sold by the Storefront from November 1, 2017 to May 31, 2018 is contained in the other pages included in Exhibit A.

1           19.     The total sales for each Health Concerns product that was sold through the  
2 Storefront are listed in the summary on the first two pages of Exhibit A. The Storefront earned  
3 revenue from sales of 46 different Health Concerns products between November 1, 2017 and  
4 May 31, 2018. Of these 46 products, 19 products were sold by the Storefront at the same price  
5 throughout November 1, 2017 and May 31, while the price changed at least once during that  
6 period for the other 27 products.

7           20.     In addition to the 46 products listed on the summary page, the Storefront also  
8 offered for sale 27 additional, separate Health Concerns products for at least a portion of the  
9 period between November 1, 2017 and May 31, 2018. However, TriGuardian calculated that the  
10 Storefront did not sell any units of these 27 products during that period, and so data relating to  
11 the Storefront's listings of these products is not included in Exhibit A.

12           21.     iServe was selling on Amazon each of the 46 products listed on the summary page  
13 for the entire period between November 1, 2017 and May 31, 2018.

14           22.     Based on my work and experience with the TriGuardian monitoring system and  
15 the testing that has been done to verify its accuracy, it is my belief that \$177,534.56 is a  
16 reasonably certain calculation of the Storefront's total sales of Health Concerns products from  
17 November 1, 2017 to May 31, 2018.

18           I declare under penalty of perjury under the laws of California and the United States of  
19 America that the foregoing is true and correct.

20           Executed on this 22 day of JUNE, 2018, in Lahi, Utah.

21  
22           By: \_\_\_\_\_

23           Jason Wells